

BEFORE THE FEDERAL ELECTION COMMISSION

MAR 28 2007

In the Matter of)

MUR 5629

Newberry for U.S. Congress)

R. Mark Morris, in his official)

capacity as treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED:

1. Take no further action as to Newberry for U.S. Congress and R. Mark Morris, in his official capacity as treasurer.

2. Close the file.

3. Approve the appropriate letters.

II. DISCUSSION

This complaint-generated matter involves the omission of a written statement at the end of several television campaign advertisements stating that the candidate approved the advertisements, in violation of the "stand by your ad" provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). See 2 U.S.C. § 441d(d)(1)(B); 11 C.F.R. § 110.11(c)(3)(iii). Newberry for Congress ("the Committee") ran five television advertisements during the week before the November 2, 2004 general election. Each of the five advertisements stated that it was paid for by Newberry for Congress, and the candidate, Jim Newberry appeared, or his photograph was shown, in the advertisements identifying himself and stating that he approved each communication. However, the advertisements lacked written statements at the end of the advertisements identifying Newberry as the candidate and stating that he has approved the communications, as required by the Act and the Commission's regulations. Accordingly, the

1 Commission found reason to believe that Newberry for U.S. Congress and R. Mark Morris, in his
2 official capacity as treasurer, ("Respondents") violated 2 U.S.C. § 441d.

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12 In response to the Commission's reason to believe finding, Respondents acknowledged
13 the violation, but claimed that the violation was inadvertent.² Respondents pointed out that
14 Newberry, a first-time candidate, substantially complied with the disclaimer requirements. They
15 also asserted that the advertisements were vetted by several experts and that Respondents were
16 ensured that the advertisements fully complied with the "stand by your ad" requirements.³ In
17 addition, Respondents asserted that the candidate's appearance in the advertisements and his
18 stated approval of the communications effectively satisfied the purpose of the "stand by your ad"

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² Respondents' Response to the Commission's Reason to Believe finding is attached. See Attachment 1.

³ Respondents did not identify the experts who purportedly vetted the advertisements.

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1 provisions. Therefore, Respondents argued that there was no likelihood of any harm to the
2 public from the omissions of the written statements in this matter.

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11 the Commission considered ADR-347/MUR 5727. In that matter

12 the complainant asserted that two candidates, Howard Kaloogian and Eric Roach, and their
13 respective committees, Kaloogian for Congress and Eric Roach for Congress, omitted written
14 statements similar to the one at issue in this matter in television campaign advertisements for the
15 Special Election in California's 50th Congressional District during the 2006 election cycle. As in
16 the instant matter, the advertisements had the required video of the respective candidates stating
17 that they authorized the advertisements and they included an oral statement that the
18 advertisements were "Paid for" by the respective committee.

⁴ The Committee filed a Termination Report on December 2, 2005 seeking to terminate. The report shows a \$4,085.03 disbursement as a donation to the "Center for Dispute Resolution" on November 17, 2005. Although the Committee filed the Termination Report, it was notified that it would not be permitted to terminate due to the pending enforcement matter.

⁵ The Act permits a candidate to make a charitable donation of excess campaign funds. See 2 U.S.C. § 439a(a)(3).

At the December 12, 2006 Executive Session, the Commission dismissed the complaint in ADR 347/MUR 5727 regarding the candidates and committees based on the premise that they sufficiently complied with the Act and the Commission's regulations by disclosing that the respective committees "Paid for" the advertisements. See Commission's Certification dated December 14, 2006. The Commission reasoned that the written statement in question would be superfluous when the candidate committee has already disclosed that it "Paid for" the advertisements, and the candidate has orally stated that he or she had approved them.

The Commission's conclusions regarding the advertisements in ADR-347/MUR 5727

warrant similar Commission action regarding these advertisements.

Therefore, based on the Commission's action regarding virtually identical activity in ADR-347/MUR 5727, we believe that it is also appropriate that the Commission exercise its discretion and not further pursue enforcement action in this matter and close the file.

III. RECOMMENDATIONS

1. Take no further action as to Newberry for U.S. Congress and R. Mark Morris, in his official capacity as treasurer.
2. Close the file.

3. Approve the appropriate letters.

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3/28/07
Date

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Attachment

Response to the Commission's Reason to Believe finding